

DEPARTMENT OF NATURAL RESOURCES 2-5

(2) **PUBLIC ACCESS.** Public access to navigable waters is defined as a way to such waters, publicly owned or under public control, reasonable direct and available to all by means of water, road, trail or otherwise through the privilege of crossing public or private lands without involving trespass.

(3) **LAND ACQUISITION.** Subject to approval of the natural resources board, the department shall:

(a) Acquire boat launching access to important stream systems.

(b) Actively pursue acquisition on lakes having more than 1,000 acres of surface water.

(c) Pursue acquisition on smaller lakes when the importance for recreational activities to the general public are such that the board determines it is desirable for the state to take action.

(d) Provide assistance to local units of government through state or federal aids administered by the state on waters where public access is desirable.

(4) **AID PROGRAMS FOR ACCESS TO WATERS.** Providing access is the joint responsibility of the state and local governments. The secretary is authorized to approve qualified aid projects in compliance with the rules set forth in Wis. Adm. Code chapter NR 50.

(5) **ACCESS IN PLATS.** Under section 236.16 (3), Wis. Stats., the department has authority to recommend wider access at less frequent intervals than prescribed in the statutes. The department shall:

(a) Consider waiver of the 60-foot access requirement only where it will be advantageous to the public to do so;

(b) Assure adequate space for users and adequate buffering for private property, with access wider than 60 feet where possible;

(c) Assure adequate access to the body of water upon approval of accessway abandonment.

(6) **GUIDELINES FOR PUBLIC ACCESS.** In state acquisition for access, in granting state or federal aids administered by the department to local governmental units, and in reviewing plats under section 236.16 (3), Wis. Stats., the following guidelines shall apply.

(a) Each project, whether an aid project or state development, shall have a demonstrable public interest and need.

(b) Lakes of less than 50 acres in size shall not be considered for improved boat launching developments or vehicular access. Walk-in and trail access will be encouraged for lakes of less than 50 acres. Parking for not more than 5 cars may be provided at the entry to trail accesses.

(c) For lakes of 50 or more acres and rivers, the parking capacity of an access site shall be in accord with the size of the lake or river. The general rule to be applied for lakes shall be not more than one parking unit for each 10 acres of water.

(d) The minimum width of an accessway to assure adequate buffering between public and private sites shall be 60 feet, but the department shall attempt to obtain a width of at least 100 feet.

(e) The primary objective of the state access aid program is to provide public access where needed and none exists. Where access exists but is inadequate, improvement will be considered as a lower priority.

(f) State boating laws (section 30.77, Wis. Stats.) authorize local units of government to charge reasonable fees for the use of access sites. Reasonable fees shall be deemed to be those currently charged for daily entrance to state parks and forest areas and shall be stipulated prior to the granting of state aid. Fees shall not be increased without the written approval of the department.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.40 Acquisition of recreational land. (1) In the acquisition of recreational lands, the department shall place principal emphasis on the acquisition of lands in the heavily populated areas of the state and in places readily accessible to such areas.

(2) A high priority shall be placed on the consolidation and completion of existing projects and new projects shall be initiated only where unusual conditions of quality, location, cost, availability and need exist which justify their establishment and implementation.

(3) All new projects shall be subject to natural resources board approval.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.41 Land acquisition authorization. (1) The following land transactions of the department shall require board approval:

- (a) Acquisitions involving cost of \$50,000 or more.
- (b) Acquisitions partially or completely outside an established project boundary.
- (c) Acquisitions, the cost of which exceeds the highest appraised value.
- (d) Condemnations of land.
- (e) Gifts of land to the department.

(2) The secretary is authorized to approve a proposed acquisition for board confirmation at a subsequent meeting if all of the following conditions exist:

- (a) The acquisition cost is under \$50,000.
- (b) The acquisition involves land completely inside a project boundary established by the board.
- (c) The acquisition cost does not exceed the highest appraised value.

(3) The department shall submit to the board each year a statistical report on the land control program, including an analysis of the program's status in relationship to the state recreational plan.

Register, March, 1976, No. 243

(4) The department shall submit to the board at each meeting a report of the status of all options and pending land acquisitions showing the date of each option.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.42 Acquisition of state forest land. (1) Within established state forest boundaries, the department shall acquire suitable forest lands for the purpose of better blocking, consolidation of ownership and improvement of management possibilities. In the acquisition program, the department shall:

(a) Acquire by purchase or by exchange suitable publicly owned lands.

(b) Acquire by purchase suitable privately owned lands.

(c) Acquire suitable privately owned lands within the forest boundary by exchange for state-owned lands located outside the forest boundary which are no longer needed for conservation purposes.

(2) Outside established state forest boundaries, the department shall acquire lands for forestry purposes only when such lands are needed for specific purposes.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.43 Acquisition of fish and game lands adjacent to water. (1) Lands on certain streams and lakes have been designated for acquisition by the board. Adequate land area, associated with the water, shall be acquired in connection with the acquisition of water frontage for preservation or recreational purposes.

(2) The width of parcels to be acquired on areas adjoining the water shall be based on the management objective of the project, the quality of the water or habitat, the opportunities for scenic enhancement or preservation, the level of public use, and the topography of the area, all with the purpose of protecting the water, the land and the associated flora and fauna.

(3) The boundaries of all land acquisition projects involving water frontage, except for perpendicular access, shall extend a distance of a minimum of 150 feet from the shoreline.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.44 Cooperation with county, town and municipal boards on land acquisition. The department shall inform county, town and municipal boards of proposed boundaries of land purchase projects in their areas. If these boards officially object, they shall be afforded an opportunity for personal appearances to present such objections to the board before a final decision on the proposed acquisition is made.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.45 Disposition of state forest lands. (1) State forest lands and other state-owned islands within state forest boundaries and lands which provide desirable public access to waters may be sold for the following purposes only:

(a) To a local unit of government when required for a public use.

(b) To others for the purpose of making land adjustments due to occupancy resulting from errors of survey.

(c) To convey good quality, arable land.

(d) To settle land title disputes.

(e) To public utilities and co-operative associations when needed for power and telephone substations, transformers, booster stations and similar installations.

(f) To dispose of land no longer needed for conservation purposes.

(2) State forest lands outside state forest boundaries which the natural resources board determines are no longer necessary for the state's use for conservation purposes shall be disposed of in accordance with the following priorities:

(a) Sale to or exchange with a unit of government.

(b) Sale to others.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.46 Disposition of state fish and game lands. (1) State-owned fish and game management lands may be sold only when the natural resources board determines such lands are no longer necessary for the state's use for conservation purposes and only in accordance with the following priorities:

(a) Sale to or exchange with another unit of government when the lands to be conveyed are required for another public purpose or the lands received in exchange are required for department project purposes.

(b) Sale to others.

(2) When such lands are to be sold to other than a unit of government, the sale shall be conducted by public auction or sealed bids.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.47 Disposition of state park lands. (1) State-owned lands within state park boundaries shall not be sold or otherwise disposed of.

(2) State-owned lands outside state park boundaries and not within any other department project which serve no project purpose may be sold when the natural resources board determines such lands are no longer necessary for the state's use for conservation purposes and then shall be disposed of only in accordance with the following priorities:

(a) Sale to or exchange with a local unit of government when required for a public use.

(b) Exchange with others to consolidate state ownership within a park boundary.

(c) Sale to others.

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(3) Restrictions may be imposed on lands disposed of to insure aesthetic park settings or compatible adjacent land uses.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.48 Leasing department lands. (1) New leases:

(a) No new leases for private use shall be executed.

(b) Short-term use permits for public use or public benefit may be issued in accordance with the statutes.

(2) Existing leases:

(a) No existing leases shall be extended or renewed.

(b) Acquisition of the rights of the lessees and tenants prior to the expiration date of such tenancies shall be made by the state when the consideration therefor is commensurate with public benefits.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.485 Granting easements. (1) Each conveyance across state lands for a right-of-way for public or private roads, public utility lines, other public purposes, or for flowage rights where such use does not conflict with the planned development by the department, may be granted by the department, but shall be presented to the board for approval if unusual circumstances or material impairment of project values are involved.

(2) A complete record of such conveyances shall be maintained by the department.

(3) Compensation shall be determined by appraisal. The loss of any project values shall be considered in establishing the value of such easement.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.49 Trespass. (1) The natural resources board may cure unintentional trespasses by purchase or sale where practicable subject to state laws relating to purchase, sale, lease or exchange of lands not withstanding any other provisions of NR 1.

(2) Improvements may be removed and any trespass terminated, or legal eviction action may be taken, where a trespasser on state-owned land under the jurisdiction of the department of natural resources has been found by the natural resources board to have been guilty of willful, intentional or negligent conduct with respect to such trespass.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75.

NR 1.50 Policy on issuance of environmental pollution orders.

(1) **DEFINITIONS.** (a) "Department" means the department of natural resources.

(b) "Board" means the natural resources board.

(c) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(d) "Water pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(e) "Rule" means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law, issued by the department to implement, interpret or make specific legislation enforced or administered by the department or to govern the organization or procedure of the department.

(f) "General orders" of the department are rules and mean orders issued by the department applicable throughout the state for the construction, use and operation of practicable and available systems, methods and means for preventing and abating environmental pollution.

(g) "Special orders" of the department mean orders issued by the department applicable to and directing specific persons to secure operating results in the control of environmental pollution within the time or times prescribed in the orders.

(h) "Emergency orders" of the department mean temporary orders issued by the department under emergency conditions of environmental pollution.

(2) RULES. Rules and general orders shall be adopted in accordance with the provisions of chapter 227, Wis. Stats. The notice of hearing on each rule requiring a hearing shall include the express terms or an informative summary of the proposed rules.

(3) SPECIAL ORDERS. (a) *Water pollution.* Special orders shall be issued by the department only after a hearing held for the purpose of ascertaining whether such orders are necessary for controlling or abating environmental pollution. Each proposed special order shall be served upon the persons affected thereby together with the notice of hearing thereon. The notice of hearing shall also be published as a class 1 notice in a newspaper having wide distribution in the area. Not less than 10 days notice specifying the time and place of the hearing shall be given by the department. The hearing shall be conducted in accordance with and be governed by chapter 227, Wis. Stats. After the hearing, the proposed special order may be set aside or it may be modified, amended or affirmed in whole or in part and a special order issued accordingly.

(b) *Air pollution and solid waste.* 1. In issuing special orders for air pollution and solid waste the department may follow the procedure set forth in paragraph (a) or

2. The department may serve on alleged violators a notice of alleged violation specifying the statute or rule allegedly violated and findings of fact on which the violation is based. An order shall accompany said notice. The order shall become effective unless the person named in the order requests in writing a hearing within 10 days of the service of the order. If a hearing is requested, the order shall be suspended. After the hearing is closed, the department shall affirm, amend or rescind the order.

(4) **EMERGENCY ORDERS.** Emergency orders may be issued by the department without a hearing whenever the department determines that a condition of imminent or actual water or air pollution exists which requires immediate action. The emergency orders shall specify the time and place of hearing thereon, not more than 24 hours after service of the order on the persons affected thereby in the case of air pollution, and as soon as practicable but not more than 20 days after service of the order on the persons affected thereby in cases of water pollution. Before the close of the hearing, and not more than 24 hours after the commencement thereof, the board, in air pollution cases, shall affirm, modify or set aside the emergency order or issue a special order. In the case of water pollution the department shall modify or rescind the temporary emergency order or issue a special order after the close of the hearing.

(5) **NOTICES.** All notices given by the department hereunder shall be served personally or by mail, and shall be deemed to have been served upon deposit in the United States mails addressed to the last known address of the person to whom addressed, with postage prepaid thereon. All petitions and notices to the department shall be served by delivery thereof to the Department of Natural Resources, Pyare Square Building, 4610 University Avenue, Madison, Wisconsin 53701.

History: Cr. Register, February, 1971, No. 194, eff. 3-1-72.